

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
THIRTIETH REGION**

Michels Corporation

and

International Union of Operating Engineers,  
Local 139, AFL-CIO

Case No. 30-CA-081206

**CHARGING PARTY’S OPPOSITION TO REQUEST FOR SPECIAL PERMISSION  
TO APPEAL AND APPEAL FROM THE ADMINISTRATIVE LAW JUDGE’S  
APPROVAL OF NON-BOARD SETTLEMENT AGREEMENT AND DISMISSAL OF  
COMPLAINT, AND RESPONSE TO RESPONDENT’S MOTION FOR APPROVAL OF  
NON-BOARD SETTLEMENT AND MOTION FOR PROTECTIVE ORDER**

NOW COMES Charging Party, International Union of Operating Engineers, Local 139, AFL-CIO, (hereinafter “Local 139” or “Union”), by and through its attorneys, pursuant to the National Labor Relations Board Rules and Regulations, hereby files its Opposition to Request for Special Permission to Appeal and Appeal from the Administrative Law Judge’s Approval of Non-Board Settlement Agreement and Dismissal of Complaint, and Response to Respondent’s Motion for Approval of Non-Board Settlement and Motion for Protective Order, and states as follows:

The crux of the Acting General Counsel’s argument in the Request filed on October 19, 2012, centers around the ALJ’s approval of a Non-Board Settlement Agreement, which in the government’s opinion “contains an overly broad and undefined ‘non-disparagement’ clause which is contrary to Board policy and otherwise fails to satisfy the standards established by the Board in Independent Stave Co.” (Request, p. 1). However, as stated in Respondent Michels’ Opposition to Request for Special Permission to Appeal and Appeal from the Administrative Law Judge’s Approval of Non-Board Settlement Agreement and Dismissal of Complaint, and Respondent’s

Motion for Approval of Non-Board Settlement and Motion for Protective Order filed earlier today (which Local 139 fully adopts and incorporates in this response), there is simply no reason why the Non-Board Settlement Agreement should be set aside.

The Acting General Counsel has not established that the ALJ failed to properly exercise her authority in approving the Non-Board Settlement Agreement, based on the criteria set forth in Independent Stave Co. Instead, the ALJ specifically questioned all the parties on the record, including discriminatee Rick Dehne, about the terms of the Non-Board Settlement Agreement and gave each of the parties an opportunity to create a record. The Acting General Counsel failed to introduce any evidence to support the basis for its Appeal (i.e., that the Union somehow “coerced” Mr. Dehne, in part, because, “Dehne depends on the Union for employment and is well aware of Respondent’s influence in the industry, putting Dehne in a precarious position should he have chosen to stand in the way of the parties’ reaching an agreement;” or that the “settlement is not reasonable given the nature of the violation and the stage of the proceedings”) (Request, p.7). Conjecture and speculation as to the interested parties’ motives are not a sufficient basis to set aside a Settlement Agreement found by the ALJ to be reasonable, fair and in the best interest of Mr. Dehne, the Union, and Michels. Especially where the record, based upon of the ALJ’s direct questioning of Rick Dehne, demonstrates Mr. Dehne’s clear and unequivocal understanding and acceptance of the terms. The Acting General Counsel surely can come up with better reasons for spending its limited resources in trying to set aside a Settlement Agreement favored by the parties who are directly impacted by its terms and approved by an ALJ.

WHEREFORE, based on the above, as well as the arguments raised in Michels' Opposition to Request for Special Permission to Appeal and Appeal from the Administrative Law Judge's Approval of Non-Board Settlement Agreement and Dismissal of Complaint, and Respondent's Motion for Approval of Non-Board Settlement and Motion for Protective Order, the Non-Board Settlement Agreement approved by the ALJ should not be set aside, but rather approved in full, and the Acting General Counsel's request, therefore, should be denied, and the protective order requested by Michels should be entered.

Respectfully submitted,

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October 24, 2012

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## **CERTIFICATE OF SERVICE**

The undersigned, an attorney of record, hereby certifies that he served the foregoing document via email PDF and regular mail to the following on or before the hour of 4:30 p.m. this 24<sup>th</sup> day of October, 2012, to the following:

Original electronically filed on the nlr.gov website with:

Lester A. Heltzer  
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National Labor Relations Board  
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Copies served via email and regular mail:

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